

Harvey Hilderbran
Chairman

Committee on
Human Services

Opinion Committee

March 10, 1995

The Hon. Dan Morales
Attorney General
State of Texas
Opinions Committee
P.O. Box 12548
Austin, Texas 78711

RE: Request for Attorney General Opinion Regarding the
Authority of a General Law Municipality to Immediately
Initiate Reannexation Procedures Following Disannexation
in Accordance with the Provisions of Section 43.033(b) of
the Local Government Code

Dear General Morales:

In 1993 the Legislature amended the Local Government Code by amending Section 43.033 first adopted by the 72nd Legislature in 1991 granting authority to general law municipalities to annex areas within their extraterritorial jurisdiction without the consent of the area annexed if certain minimum conditions were met.

The Act provides that if a majority of the landowners or registered voters in the area vote by petition submitted to the municipality for disannexation not sooner than one year nor longer than three years after the date of said annexation, that the municipality shall disannex the area immediately.

The act further provides that if the municipality disannexes the area, it may discontinue providing the area with water and sewer service.

If the municipality does discontinue any such water and sewer service being provided at the time of the disannexation, it, of course, eliminates one of the conditions precedent to its ability to annex the area in question as provided by subsection (a)(3) of Section 43.033. If, however, the municipality exercises its discretion to not discontinue any such water or sewer service to the disannexed area, or if it is prohibited from doing so by Texas Water Code Section 13.250 (without application to and hearing before the Texas Natural Resource and Conservation Commission (TNRCC) to amend its Certificate of Convenience and Necessity),

Elliott Naishtat
Vice Chair

Members: Diana Davila, Mary Denny, Jesse Jones,
Mike Krusee, Glen Maxey, Carolyn Park, Arlene Wohlgemuth



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then may such municipality ignore the will of the landowners and registered voters in the area disannexed and immediately reinitiate annexation procedures. Based on the timing of such reinitiated annexation procedures, it may be that the municipality could consummate the annexation within the same calendar year as the disannexation, such that the area would never be removed from he municipality's tax roles, despite the disannexation.

The Act is silent on what, if any, constraints are imposed on the municipality to prevent it from honoring the letter of the law while wholly ignoring and frustrating its intent. This is a case of first impression for which there is no specific judicial guidance and its effects on public interest.

Accordingly, your guidance in this matter would be greatly appreciated.

Sincerely,



HARVEY HILDERBRAN
Chairman